Supreme Court, U.S.
FILED
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91-305
No. _____

In The
Supreme Court of the United States
October Term, 1991

ROBERT M. WEICHERT,

Petitioner,

vs.

ELAINE W. ROBERTS,

Respondent.

Petition For Writ Of Certiorari To The Fourth District Court Of Appeal, State Of Florida

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PREFACE

The parties will be referred to as the petitioner and respondent or by their proper names. The following symbols will be used:

(A) – Petitioner's appendix

(R) – Respondent's appendix.

STATEMENT OF THE CASE

We cannot agree with petitioner's statement of the case because it includes facts which are neither true nor in the record.

Decedent's last will was executed in February of 1982 (A-M-8). It stated that she was a resident of Palm Beach County, Florida. Under that will, petitioner, Robert M. Weichert, was named a co-personal representative with another person. On December 15, 1988, decedent executed a codicil to her will in which she deleted that provision of the 1982 will making Robert M. Weichert co-personal representative, and appointed all three of her children, Harold R. Weichert, Robert M. Weichert, and Elaine W. Roberts, as co-personal representatives. That codicil stated that the decedent was a resident of Osceola County, Florida, and was executed in Delray Beach, Florida (A-M-18).

Elaine W. Roberts, respondent, filed a petition for administration stating that the decedent's last known address was in Delray Beach, and that she died in the Manor Care Nursing Home, Boynton Beach, Florida (A-M-1). It further stated that at the time of her death

decedent was domiciled in Palm Beach County, Florida. Her petition also stated that she was qualified to serve as personal representative, that Harold R. Weichert had waived his right to serve as co-personal representative and joined in her petition, and that Robert M. Weichert was not qualified because of Section 733.303, Florida Statutes (1990). That statute provides that a convicted felon cannot serve as a personal representative. Petitioner, Robert M. Weichert, is a convicted felon. He was convicted of bankruptcy fraud and conspiracy to commit bankruptcy fraud, and was sentenced to three years imprisonment. Prior to committing those offenses he was disbarred as a lawyer in the State of New York for other misconduct (R 1).

An evidentiary hearing, after notice, occurred on the petition for administration on September 6, 1990, and the lower court entered an order admitting the will to probate and appointing Elaine Roberts as personal representative on that date. In that order the court found that Robert M. Weichert was not qualified to serve as personal representative (A-L-1). The testimony at that hearing was not transcribed.

SUMMARY OF ARGUMENT

Section 733.303(1)(a), Florida Statutes, which prohibits a convicted felon from serving as a personal representative, is not unconstitutional. In addition petitioner's argument is moot because this estate has now been fully administered.

ARGUMENT

Section 733.303(1)(a), Florida Statutes, provides:

> (1) A person is not qualified to act as a personal representative if:
>
> (a) He has been convicted of a felony.

Although petitioner's sole basis for seeking review in this court is that the above statute is unconstitutional, petitioner did not raise the constitutionality of the statute in the trial court. Petitioner's argument in the trial court was that the decedent died a resident of New York. Apparently petitioner was attempting to evade the prohibition against convicted felons serving as personal representatives in Florida by arguing that the decedent was a resident of New York when she died.

Petitioner did argue in the Florida Appellate Court that the statute was unconstitutional, however petitioner cited no authority for that argument, and he cites no authority in his petition for certiorari. There are numerous obvious reasons why a convicted felon should not be able to serve as a personal representative, since a personal representative is entrusted with the assets of a decedent's estate, and is in a fiduciary duty to the beneficiaries and creditors. The statute is not unconstitutional.

The constitutionality of the statute prohibiting petitioner from serving as personal representative is also moot in this case. This will was admitted to probate on September 6, 1990 (A-C-3), and at this point in time administration of this estate is complete. But for the filing of this petition for certiorari the administration of this estate would be concluded.

CONCLUSION

Section 733.303(1)(a), Florida Statutes, prohibiting convicted felons from serving as personal representatives, is not unconstitutional. The petition for certiorari should be denied.

Respectfully submitted

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SEAL

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Ms. Elaine W. Roberts
312 N. Swinton Ave.
Delray Beach, FL 33444

RE: United States v. Robert M. Weichert
Criminal Action No. 84-CR-139

Dear Ms. Roberts:

At the request of your brother, Dr. Harold Weichert, I enclose herewith a copy of the Judgment and Committment [sic] Order in the above referenced criminal action.

As appears from the judgment and committment order, defendant Robert M. Weichert was convicted under several counts of bankruptcy fraud and conspiracy to commit bankruptcy fraud and was sentenced to a total of three years imprisonment, five years probation, fines and restitution. Originally Mr. Weichert was sentenced to pay $200,000 in restitution but that figure was subsequently reduced to approximately $156,000.

Several years before the commission of the offenses which resulted in this conviction, Mr. Weichert was disbarred as an attorney in the state of New York for various acts of malfeasance in connection with his handling of his client's assets.

If this office can be of further assistance, please advise.

Yours very truly,

FREDERICK J. SCULLIN, JR.
United States Attorney

/s/ William H. Pease
By: William H. Pease
Assistant U.S. Attorney

WHP/mag
Enc.